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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 CHILDREN'S HEALTH DEFENSE,
14
15 Plaintiff,
16 v.
17 FACEBOOK, INC., et al.,
18 Defendants.

Case No. 3:20-cv-05787-SI

**PLAINTIFF'S REQUEST
FOR LEAVE TO FILE STATEMENT
OF RECENT DECISION**

Civil L.R. 7-3(d)(2), 7-11



REQUEST FOR LEAVE TO FILE**STATEMENT OF RECENT DECISION**

Pursuant to Civil Local Rule 7-3(d)(2) and 7-11, Plaintiff Children’s Health Defense (“CHD”) respectfully requests the Court’s permission to file the Statement of Recent Decision submitted herewith. The Statement of Recent Decision relates to an Order issued by this Court in *United States v. Lonich*, 2021 U.S. Dist. LEXIS 81562, Case No. 17-cr-00139 SI (N.D. Cal. April 28, 2021), amended on other grounds on May 5, 2021 (Dkt. #482).

In *Lonich*, this Court stated that “uncertainty still surrounds the degree and duration of protection vaccines provide against the [COVID-19] virus or its mutations.” *Id.* at *7. CHD cannot post this simple, truthful statement on its Facebook page because Facebook’s “COVID-19 and Vaccine Policy Updates & Protections” prohibits posting any “claims that COVID-19 vaccines are not effective in preventing COVID-19.” <https://www.facebook.com/help/230764881494641>.¹ If Facebook decided that policy on its own, it *may* be cause to lament an unwise use of private corporate power. But if, as plausibly alleged, the Centers for Disease Control and Prevention (“CDC”) acted in concert with Facebook to decide that policy, it *is* cause to lament the curtailment of the First Amendment, and for this Court to permit CHD’s constitutional claims to proceed under 28 U.S.C. § 1331. Thus, this Order is relevant to the motions to dismiss currently pending before this Court.

On April 30, 2021, the United States moved for reconsideration of the Court’s release order, partly on the ground that “[a]ccording to the CDC, ‘[a]ll COVID-19 vaccines currently available in the United States have been shown to be safe and effective at preventing COVID-19.’”² (Dkt. #476 at 2.) Plaintiff submits there is good cause for this Court to accept Plaintiff’s Statement of Recent Decision as

¹ As explained in Plaintiff’s concurrently-filed Request for Judicial Notice, the Court may take judicial notice of the existence and content of this website. *See Threshold Enters. Ltd. v. Pressed Juicery, Inc.*, 445 F. Supp. 3d 139, 146 (N.D. Cal. 2020). It cannot reasonably be disputed that Facebook made the quoted statement as that fact can be readily determined from sources whose accuracy cannot reasonably be disputed. *See id.* at 145.

² The United States’ statement that COVID vaccines are “safe and effective” is explicitly contravened by federal law. As Emergency Use Authorization products only, the Food and Drug Administration has merely determined that COVID vaccines “may be effective in diagnosing, treating, or preventing – (i) such disease or condition.” 21 U.S.C. § 360bbb-3(C)(2)(A)(i).

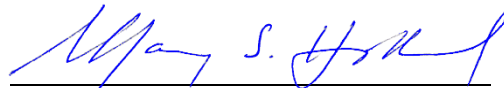
1 timely-submitted under Civil L.R. 7-3(d)(2), because this Court did not reaffirm the quoted portion of its
2 April 28 order until May 5, 2021, which was the date of the noticed hearing in this action.

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4 Dated: May 11, 2021

Respectfully submitted,

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